

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

JEANETTE BALLEW, SHANNON
STEPHENSON, DEBBIE ROBINSON,
BEATRICE MADRID,

Plaintiffs,

Case No. 2:11-cv-00749-JAP/WPL

vs.

WAL-MART STORES EAST, L.P.,

Defendant.

**DEFENDANT'S MOTION FOR REIMBURSEMENT OF FEES AND COSTS RELATED
TO PLAINTIFFS' EXPERT WITNESS**

Defendant, by and through its undersigned counsel, and pursuant to the Court's July 6, 2012 Memorandum Opinion and Order (Dkt. 40) ("Order"), hereby moves this Court for reimbursement from Plaintiffs' attorneys of Defendant's fees and costs relating to the deposition of Plaintiff's expert witness, Thomas D. McKinnon, Ph.D. In the Order, the Court allowed Defendant to file a motion seeking reimbursement from Plaintiffs' attorneys for: "(1) the reasonable fee and costs charged by each of Plaintiffs' experts to attend and testify at a deposition taken by defense counsel; and (2) the reasonable attorneys' fees and costs incurred by defense counsel in preparing to depose and in deposing Plaintiffs' experts."

Defendant deposed Dr. McKinnon on March 22, 2013. For his deposition, Dr. McKinnon charged Defendant \$840.00. *See* Exhibit 1, Invoice of Thomas D. McKinnon. In addition, Defendant expended 14.6 hours preparing for and taking Dr. McKinnon's deposition. Thus, at the undersigned's billing rate for this matter, \$325.00 per hour, the total reasonable attorneys' fees related to Dr. McKinnon's deposition are \$4745.00. The undersigned states that this hourly rate is reasonable considering the undersigned has practiced employment law for 23

years and his normal hourly billing rate for 2013 is \$475.00 per hour. An itemized list of the undersigned's fees related to Dr. McKinnon's deposition is attached hereto as Exhibit 2.

Based on the foregoing, Defendant hereby requests that the Court issue an order requiring Plaintiffs' attorneys, jointly and severally as set forth in the Order, to reimburse Defendant for the fee charged by Dr. McKinnon to attend his deposition and the reasonable attorneys' fees and costs incurred by defense counsel in preparing to depose and in deposing Dr. McKinnon.

Respectfully submitted this 3rd day of April 2013.

/s/ Steven G. Biddle

Steven G. Biddle (*pro hac vice* admission)
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Attorneys for Defendant

I hereby certify that I electronically transmitted the above document to the Clerk's Office using the CM/ECF System for filing and transmittal of a Notice of Electronic Filing to the following if CM/ECF registrants, and mailed a copy of same to any non-registrants this 3rd day of April 2013:

Dick A. Blenden, Esq.
208 West Stevens
Carlsbad, NM 88220

C. Barry Crutchfield, Esq.
TEMPLEMAN & CRUTCHFIELD
113 E. Washington Ave.
Lovington, NM 88260-4018

/s/ Steven G. Biddle

Firmwide:119513088.1 015602.7878

EXHIBIT 1

Thomas D. McKinnon
2209 East Manor Drive
Gilbert, AZ 85296

Invoice submitted to:
Steve Biddle, Esq.
Littler Mendelson
2425 East Camelback Road, Suite 900
Phoenix,, AZ 85216

March 25, 2013

In Reference To: Ballew, et al. v. WalMart

Professional Services

	<u>Hours</u>	<u>Amount</u>
3/22/2013-Deposition re Ballew, et al. v. WalMart: 3 hours 3/22/2013	3.00	\$840.00
For professional services rendered	<u>3.00</u>	<u>\$840.00</u>
Accounts receivable transactions		
3/21/2013 Deposition fee advance.		<u>(\$500.00)</u>
Total payments and adjustments		<u>(\$500.00)</u>
Balance due		<u><u>\$340.00</u></u>

EXHIBIT 2

EXHIBIT 2

ITEMIZED FEES RELATING TO DEPOSITION OF THOMAS MCKINNON (Timekeeper - Steven G. Biddle)

<u>DATE</u>	<u>TIME</u>	<u>DESCRIPTION OF SERVICES</u>
2/21/13	0.6	Begin drafting deposition outline for expert economist after reviewing his resume and expert report.
3/12/13	1.4	Continue drafting deposition outline for plaintiff's expert economist after reviewing report.
3/13/13	0.2	Telephone calls and correspondence to and from expert economist and Plaintiffs' attorneys re: availability for a deposition.
3/14/13	0.2	Correspondence to and from expert economist and plaintiff's attorneys re: availability and logistics for telephonic deposition.
3/15/13	0.4	Correspondence to and from expert economist and plaintiffs' attorney re: expert deposition and paying expert's fees, and draft notice of deposition and subpoena for expert economist.
3/20/13	1.6	Review and digest plaintiffs' deposition transcripts to prepare for expert economist deposition and trial.
3/21/13	4.8	Continue reviewing file, plaintiffs' depositions and expert's report and revising expert economist deposition outline.
3/22/13	5.4	Prepare for and take plaintiff's expert economist's deposition.
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<u>TOTAL:</u>	14.6 HOURS @ \$325/HR. = \$4,745.00	